

1
2 UNITED STATES DISTRICT COURT
3 DISTRICT OF MASSACHUSETTS

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5 IN RE: NEW ENGLAND COMPOUNDING) MDL NO. 13-02419-RWZ
6 PHARMACY CASES LITIGATION)
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13
14 BEFORE: THE HONORABLE RYA W. ZOBEL
15

16
17 **STATUS CONFERENCE AND**
18 **MOTION HEARING**
19

20
21 John Joseph Moakley United States Courthouse
22 Courtroom No. 12
23 One Courthouse Way
24 Boston, MA 02210
25

March 13, 2014
1:30 p.m.

Catherine A. Handel, RPR-CM, CRR
Official Court Reporter
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Boston, MA 02210
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P R O C E E D I N G S

(The following proceedings were held in open court before the Honorable Rya W. Zobel, United States District Court Judge, United States District Court, District of Massachusetts, at the John J. Moakley United States Courthouse, One Courthouse Way, Boston, Massachusetts, on March 13, 2014.)

THE COURT: Good afternoon. Please be seated.
Please be seated.

(Discussion off the record at the bench.)

COURTROOM DEPUTY CLERK URSO: This is In Re: New England Compounding case. It's MD-13-2419.

THE COURT: Good afternoon.

MR. SOBOL: Good afternoon, your Honor.

There is a joint proposed agenda, your Honor --

(Interruption by automated telephone conference announcement.)

THE COURT: Anybody who is late joining the conference is now out of order. So, please don't tell us any more, Robot.

COURTROOM DEPUTY CLERK URSO: I just turned it down.

MR. SOBOL: Judge, we're starting things off on a good foot, your Honor. It's 1:30 in the afternoon.

There's a proposed agenda. I don't know if you have a copy.

THE COURT: I have it. I have a proposed agenda. I have the Plaintiffs' Steering Committee status report, the

1 Bankruptcy Committee's status report, and a couple of other
2 papers that were filed earlier in a different context.

3 MR. SOBOL: Very good, your Honor.

4 So, the question, then, is what organizing -- what do
5 you want to get accomplished today? So, we should probably
6 set that up, because I know that you have other matters that
7 are on this afternoon. So, I would suggest, but it's
8 obviously up to the Court, that we forego introductions of the
9 parties. You've got lots of lawyers here. They represent
10 lots of people. Perhaps they could tell you --

11 THE COURT: There are a couple of lawyers whose names
12 I would like to know the identity.

13 I know you. I know -- Ms. Parker, is it?

14 MS. PARKER: Yes, your Honor.

15 THE COURT: And Mr. Gerstein is not here.

16 MR. SOBOL: No. That's a different case, your Honor.
17 He's not on this one, unfortunately, but Mr. Stranch is here.

18 THE COURT: I know at least two others.

19 Mr. Sobol was before me at least twice this week,
20 right?

21 MR. SOBOL: Yes, your Honor.

22 THE COURT: So, Mr. Stranch?

23 MR. STRANCH: Good afternoon, your Honor.

24 THE COURT: Let me just make a note.

25 (Pause.)

1 THE COURT: Mr. Stranch, are you not among the
2 consolidated plaintiffs? Oh, here you are. Mr. Stranch, Ms.
3 Parker, Mr. Sobol.

4 And who else is at counsel table for the plaintiffs?

5 MR. CHALOS: Mark Chalos, your Honor, C-h-a-l-o-s.

6 THE COURT: I have it.

7 And now for the NECC defendants. Is anybody here for
8 them? No.

9 MR. FERN: Yes, your Honor. Frederick Fern from
10 Harris Beach, especially retained counsel for the trustee for
11 the Chapter 11 NECC defendant. Also --

12 THE COURT: I'm sorry. Mr. Dean?

13 MR. FERN: Fern, F-e-r-n, Frederick Fern.

14 THE COURT: I got it.

15 MR. FERN: Thank you.

16 MR. GOTTFRIED: Your Honor, Michael Gottfried for the
17 bankruptcy trustee Paul Moore from Duane Morris.

18 THE COURT: I'm not there yet. You're at the end of
19 my list.

20 MR. GOTTFRIED: Okay. Thank you, your Honor.

21 THE COURT: I didn't do that.

22 Now, anybody else for the NECC defendants, including
23 all of their subsidiaries and --

24 MR. TRANEN: Your Honor, Daniel Tranen and --

25 THE COURT: I'm sorry?

1 MR. TRANEN: Daniel Tranen and John Culbertson.

2 THE COURT: Okay. Anybody else?

3 MR. RABINOVITZ: Dan Rabinovitz on behalf of Medical
4 Sales Management, Inc., your Honor.

5 THE COURT: Okay. Anybody else?

6 MR. KLARFELD: Good afternoon, your Honor. Joshua
7 Klarfeld on behalf of GDC Properties.

8 THE COURT: I don't know. I can't find you, but I'll
9 take your word for it.

10 MR. MORIARTY: Good afternoon, your Honor. My name
11 is Matthew Moriarty. I represent Ameridose.

12 THE COURT: This may be a silly exercise. I found
13 you. Who else?

14 (No response.)

15 THE COURT: Okay. Now, who is here for Unifirst? Is
16 that the name?

17 MR. REHNQUIST: Jim Rehnquist, your Honor, and
18 Roberto Braceras, your Honor.

19 THE COURT: Mr. Rehnquist. And I'm sorry?

20 (Interruption by automated telephone conference announcement.)

21 (Discussion off the record at the bench.)

22 COURTROOM DEPUTY CLERK URSO: Judge, I just typed and
23 I said you don't need to listen to who is calling in.

24 THE COURT: Now, is there anybody else whose identity
25 I should know? Liberty, is Liberty represented?

1 MR. HERMES: Good afternoon, your Honor. Peter
2 Hermes representing Liberty Industries. With me is Scott
3 Spearing, your Honor, S-p-e-a-r-i-n-g.

4 MR. SPEARING: Good afternoon, your Honor.

5 THE COURT: Okay. Anybody else that I need to know
6 who will be actually anticipating?

7 MS. ANDREWS: Yes, your Honor. Anne Andrews. I'm
8 the co-chair of the Official Creditor's Committee.

9 THE COURT: Oh, yes.

10 MS. ANDREWS: I'm here with my co-chair, one of them,
11 Mr. Michael Coren.

12 MR. COREN: Good afternoon, your Honor.

13 THE COURT: Hold it one second.

14 (Pause.)

15 THE COURT: I have all of these little stickies, but
16 I'm not familiar, not yet, with who is who.

17 Okay. Ms. Anderson. And who is with you?

18 MR. COREN: Michael Coren, your Honor, C-o-r-e-n.

19 MS. ANDREWS: And, your Honor, may I introduce --

20 THE COURT: I don't have you as a member of the
21 committee.

22 MR. COREN: I'm co-chair, your Honor.

23 THE COURT: Mr.?

24 MR. COREN: Coren, C-o-r-e-n.

25 MR. MOLTON: Your Honor --

1 MS. ANDREWS: Pardon me, your Honor. I wanted to
2 introduce you to our committee counsel. The official
3 committee has counsel for the committee, Mr. Molton.

4 MR. MOLTON: David Molton, your Honor, of Brown
5 Rudnick for the Official Committee of Unsecured Creditors.

6 THE COURT: Got you.

7 MR. MOLTON: Thank you.

8 THE COURT: Now we come to you.

9 MR. GOTTFRIED: I'm glad to be here, your Honor.
10 Michael Gottfried for the trustee, Paul Moore.

11 THE COURT: This is very interestingly arranged
12 because it's got interested parties, of which you are one.

13 MR. GOTTFRIED: That certainly would be accurate.

14 THE COURT: You're at the very end. Mr. Gottfried,
15 right?

16 MR. GOTTFRIED: Yes.

17 THE COURT: Anybody else for the trustee?

18 MR. GOTTFRIED: I'm by myself.

19 THE COURT: So, that's it, right? Okay. Thank you
20 all very much.

21 I'm sorry that you now have to put up with another
22 Judge after having had such a good relationship with Judge
23 Saylor, but I'll do my best to keep up with him.

24 Mr. Sobol, Ms. Parker, who will address your jointly
25 proposed agenda with the report regarding the status of

1 various issues?

2 As you tell me about that, understand that I have
3 read all of it. That is, all of the stuff you gave me, and
4 that the trustee gave me -- or the committee, rather.

5 MR. SOBOL: Excellent.

6 MR. LICHTENSTEIN: Has the Court requested who wishes
7 to participate? I couldn't tell what you were saying.

8 THE COURT: Who is speaking?

9 COURT REPORTER: I cannot hear him.

10 THE COURT: We cannot hear you. Speak up, please.
11 Are you there?

12 MR. LICHTENSTEIN: Now I can hear. Those of us on
13 the phone can barely hear you.

14 THE COURT: Crank up the volume on your phone.

15 MR. SOBOL: Ask them to mute them.

16 THE COURT: Now, did you wish to speak? Other than
17 to tell me that you can't hear me?

18 MR. LICHTENSTEIN: Your Honor, this is John
19 Lichtenstein and we did -- I don't think the Court could hear
20 us before. We have requested the opportunity to participate.
21 We are down the course agenda a ways in Section 5. So, we're
22 very appreciative of the opportunity to participate.

23 THE COURT: Section 5 of the agenda?

24 MR. LICHTENSTEIN: Yes, ma'am.

25 THE COURT: Which has to do with the trustee's motion

1 to transfer?

2 MR. LICHTENSTEIN: That is correct, your Honor.

3 THE COURT: Okay. Well, Mr. Sobol is about to
4 address all of the sections to the extent that they deem it
5 necessary. I told him I have read all of the agenda. I have
6 read the report of the committee as well as the report of the
7 Bankruptcy Committee.

8 So, when Mr. Sobol finishes, I will ask you if you
9 have to say anything, and I would much appreciate it if you
10 would do it in as brief a time as possible.

11 MR. LICHTENSTEIN: Absolutely, your Honor.

12 And, your Honor, we -- there are other counsel as
13 well, as the Court knows, with respect to these matters and we
14 would actually follow them, I believe, and that is Mr. Sexton,
15 who I understand is with the Court today.

16 MR. SEXTON: That's me, your Honor.

17 MR. LICHTENSTEIN: But we will be brief.

18 MR. SOBOL: When we get there, we'll --

19 THE COURT: I don't wish to have anybody talking
20 twice about the same thing, please.

21 So, Mr. Sobol, you may begin.

22 MR. SOBOL: Thank you, your Honor.

23 So, the overview that I would like to present to you,
24 since you have read everything, is I think that it probably
25 makes most sense, since this is your first time really hearing

1 the matter, for me to give you just an overview about what
2 pieces are at play, what in a broad context is really sort of
3 going on in this MDL and what you should, therefore, be
4 sensitive to.

5 THE COURT: Would it be helpful if I were to explain
6 to you what I understand the situation to be?

7 MR. SOBOL: Yes.

8 THE COURT: And then you can fill it in and tell me
9 what I have wrong.

10 MR. SOBOL: That will be most efficient. Go ahead,
11 your Honor.

12 THE COURT: Okay. As I understand it, there is,
13 first of all, the bankruptcy piece, and the committee
14 appointed by the trustee or the bankruptcy judge or both, and
15 they and the -- well, the bankruptcy judge and the bankruptcy
16 trustee have apparently managed to collect a relatively large
17 amount of money from the NECC, whatever they are, defendants
18 from the bankrupt as well as the affiliated people who are the
19 Conigliaros, and others like that, as well as their insurers,
20 and that there is in progress now an attempt to settle all of
21 these claims, with the notion that there would be set up some
22 kind of a fund eventually, that a common fund -- that they
23 would go -- that's not called a common fund. It has another
24 name.

25 MR. SOBOL: Yes.

1 THE COURT: For distribution in some way, with hold-
2 backs, distribution to the people who were harmed.

3 And there are some issues remaining as between the
4 bankruptcy court and this Court as to what cases should come
5 here, which may be ripe and may not. I'm not sure about that.

6 So, that I understand to be one piece that appears to
7 be well under control, except for the fact as to how much
8 formality there exists with respect to certain parties in this
9 Court that are now in bankruptcy court.

10 That, I understand, to be one piece; is that correct?

11 MR. SOBOL: Generally, that's right. If you're done,
12 I'll sort of fill it in or was there more you wanted to add,
13 your Honor?

14 THE COURT: Go ahead.

15 COURTROOM DEPUTY CLERK URSO: Can you speak into
16 there?

17 THE COURT: Now, in fact, let me try to finish,
18 because then I get a picture of the whole and you can
19 certainly elaborate on anything.

20 The second piece, as I understand it, is the piece
21 that caused Judge Saylor to have to leave. The introduction
22 as defendants in this case of the Cleanroom Group. Liberty,
23 which as I understand it, manufactured or produced or
24 installed these Cleanrooms and you need -- what is it?

25 MR. BRACERAS: Unifirst.

1 THE COURT: I'm sorry?

2 MR. BRACERAS: Unifirst.

3 THE COURT: Unifirst, which was in charge of cleaning
4 them.

5 (Interruption by automated telephone conference announcement.)

6 THE COURT: There has to be a way to stop that.

7 So, as I understand it, one of these two new
8 defendants is in the process of some settlement negotiations
9 and Unifirst is not, correct?

10 MR. BRACERAS: Correct.

11 THE COURT: At least not yet.

12 MR. BRACERAS: Correct.

13 THE COURT: That, as I understand, is the story with
14 respect to those defendants at this point.

15 And then there is a large group of what I have been
16 calling "state defendants," the people -- the injectors, and
17 their companies.

18 What I'm not altogether clear about is -- I gather
19 that those who are here are those who either filed initially
20 in the federal court in their states or who filed in state
21 court and were removed to the federal court, but we do not
22 have any plaintiffs or defendants from those cases that may
23 still be in state court; is that right?

24 MR. SOBOL: Generally. I'm going to let you finish
25 and then sort of fill it in around the edges, yes.

1 THE COURT: Okay. So, that's what I understand to be
2 the picture of the litigation in terms of the participants.

3 MR. SOBOL: Okay. So, let me fill in some other
4 things.

5 THE COURT: I wish you would.

6 MR. SOBOL: Obviously, you've done your homework.

7 THE COURT: That's what I wanted you to say.

8 MR. SOBOL: Very good.

9 So, there are -- as you've identified, there are
10 essentially three groups of different kinds of defendants.
11 There's what we have been calling here -- to give you some of
12 our vernacular, there are the -- there's NECC, which is the
13 only debtor in the bankruptcy, technically. There are then
14 the affiliated companies and the individuals who owned and/or
15 ran NECC. So, those --

16 THE COURT: Excuse me one minute.

17 There are some seats over here.

18 MR. SOBOL: There are the affiliated defendants, the
19 companies that are associated with NECC and the individuals
20 who owned and ran NECC who are -- we call "the insiders."
21 That's the second group. NECC and then the affiliated.

22 The third group are what we've been calling "national
23 defendants." You picked up on that. That's Unifirst or ARL
24 or Liberty, companies that were generally involved with NECC
25 who might be an actual or potential defendant from anybody all

1 over the country because of their central arguable
2 involvement.

3 And then the fourth group are "the injectors," the
4 clinics, scattered across many states in the country. We have
5 those --

6 THE COURT: I'm sorry. Who is the third group? You
7 called it the "state defendants"?

8 MR. SOBOL: The third group are the national
9 defendants.

10 THE COURT: National defendants.

11 MR. SOBOL: And then the fourth group are the --

12 THE COURT: Who are the national defendants?

13 MR. SOBOL: Unifirst that did like cleaning. ARL,
14 that was --

15 THE COURT: That was my second group.

16 MR. SOBOL: Yes, exactly.

17 THE COURT: Because you divided the NECC defendants.

18 MR. SOBOL: Right, just because, technically, you've
19 got NECC only as the debtor, which in some respects sometimes
20 is relevant.

21 THE COURT: Okay.

22 MR. SOBOL: So, there are those four groups of
23 defendants.

24 Now, as an overall mission, as an aspiration that is
25 shared by many people in this courtroom, there's a desire --

1 to the extent there's any defendant from any category that
2 wants to participate in a settlement through a bankruptcy
3 envelope, if you will, that would lead to a plan that would
4 create a tort trust, right. So, the notion is any
5 participants might be able to go into that process, okay?

6 So, where are we to date with respect to that?

7 Well, NECC, the affiliated defendants and the
8 individuals -- we have a proposal that is not yet signed, but,
9 hopefully, will be signed imminently to have money put in, not
10 only by NECC, but by the affiliated defendants and individuals
11 into a pot in a bankruptcy context.

12 Once that money is put in there, there might be other
13 contributions. Perhaps, a clinic settles. Perhaps we can get
14 Unifirst to settle and discuss and they can put some money
15 into that pot. The notion is then a plan gets formed. There
16 has to be voting on the plan, objections, all the rest of that.

17 The ultimate output of that would be a tort trust
18 where there would be a matrix and an allocation to
19 individuals, that kind of thing. That's an overall aspiration
20 shared by many to have both the MDL driving litigation, to
21 have settlements and money that goes into the bankruptcy as an
22 overall effort.

23 Now, therefore, it's important for you to understand
24 where we are with each of those buckets so that you can have
25 some context about what's going on with the motions that

1 people want to try to argue today or at least in some way
2 address.

3 I've indicated where we are with NECC today.

4 You will also understand where we are with the
5 affiliated defendants and the individuals. A proposal,
6 hopefully, will be signed. Hopefully, there will be some
7 things that will then go through a process.

8 There are then -- there are some mediations that are
9 going on for some national defendants. I'm not going to get
10 into the details of them right because we don't have an awful
11 lot of time. You will learn that some mediations are going on
12 for some national defendants.

13 Some other national defendants, as you indicated,
14 like Unifirst, are defendants that we have to proceed forward
15 with the usual litigation.

16 On the clinic side, although there are scores of
17 clinics across the United States, injectors, that are arguable
18 potential defendants, some clinics are the target of many more
19 lawsuits than others, obviously. Some of those clinics have
20 agreed to participate also in mediation, and we have discovery
21 stays that would relate to them, and then there are a small
22 handful of larger clinics who are larger in the sense that
23 their targets are more, which we're going forward with the
24 litigation.

25 So, as an example, one of them is the St. Thomas

1 entities which we're moving forward with litigation, which
2 there are some things on before you today.

3 Now, the only other things that I would give sort of
4 an overview so you can understand it is that to date, the way
5 that Judge Saylor and Judge Boroff dealt with bankruptcy
6 issues is that there have been no formal motions, I don't
7 think, maybe a detail here or there, but, by in large, there
8 hasn't been any sort of formal order put in place that says,
9 here's what Judge Saylor is going to do and here's what Judge
10 Boroff is doing to do. There's nothing formal like that.
11 They have informally talked with one another, but as a
12 practical matter, if something has to go forward in the
13 bankruptcy court, they have gone forward with Judge Boroff,
14 and some things that are classically MDL-ish, if it will, it
15 went forward with Judge Saylor, and the parties have let Judge
16 Saylor and Judge Boroff informally communicate with the -- at
17 least, that's what we've been informed. Obviously, we haven't
18 participated in those communications -- to the extent they
19 thought was necessary there.

20 I think that's the main overview, if you will. I'm
21 not trying to get into anything more specific, but I think
22 that's generally what's going on.

23 I guess I need to add just one piece. Although there
24 are about 80 clinics, for instance, that the Plaintiffs'
25 Steering Committee served subpoenas on for certain kinds of

1 information, we won't see as the mission of this MDL to
2 litigate cases against every single one of those 80 clinics,
3 because there's going to be some kind of triage that would
4 have to occur, and there's going to have to be some kind of
5 understanding that there are some clinics that aren't being
6 sued by many people at all, but then there'll be other clinics
7 where we see, you know, outside -- like St. Thomas and some
8 others, that are larger, that have more victims, that we will
9 see it as our job to, you know, make sure those are buttoned
10 down with respect to them.

11 THE COURT: But those -- do you anticipate that they
12 would be litigated here?

13 MR. SOBOL: No, not all of them. Some of them may.
14 Like St. Thomas may right now be litigated here, all right,
15 because their cases --

16 THE COURT: Under the umbrella of the MDL?

17 MR. SOBOL: Yes, that's right. That's right.

18 And there are probably, you know, a small handful of
19 other clinics that, in our view, would fall into that bucket.

20 We've also -- by the way, there's been very -- I
21 won't even call it discussions -- remarks between the
22 participants and Judge Saylor about, you know, if one actually
23 got to a trial, well, where would that be conducted and who
24 would be doing the trial. Sort of questions posed. No
25 answers to those. No papers filed. Questions posed.

1 Certainly, I'm sure that you would look forward to
2 going to Roanoke, Virginia, for instance, and trying some
3 cases there for Mr. Sexton, or others, but that's an issue
4 down the road. So --

5 UNIDENTIFIED SPEAKER: Would everyone on the line
6 please put their phones on mute.

7 MR. SOBOL: So, the bottom line ends up being that
8 although there are lots of people and there are lots of moving
9 pieces, I think that what you'll see is that, at least from my
10 point of view, this MDL is becoming somewhat more -- you can
11 see a very faint light at the end of the tunnel.

12 Why? Because there will be an agreement in
13 principle. There is an agreement in principle. There will be
14 a final agreement that's going to be proposed in the
15 bankruptcy for the main defendant, NECC, and their related
16 entities and individuals. And then there is going to be many
17 mediations that are ongoing for most of the national
18 defendants right now and not many of the national defendants
19 are litigating right now. So, that's sort of a -- you can see
20 the light at the end of the tunnel there.

21 And then on this huge number of clinics, there's
22 going to have to be some kind of manageability kind of
23 identification of which clinics are really to be serious about
24 and which are really not the role of the MDL. That's sort of
25 an overview.

1 With that, then, what I would suggest, your Honor,
2 because I've sort of given you an update on these things, is
3 that we could, therefore, skip A(1), 2, 3, 4, 5 and 6. These
4 are matters that -- you know, there's a trial plan issue for
5 St. Thomas. There's some motions to dismiss on. There are
6 some issues that need to be argued, perhaps, later on, but I
7 think we can go through those items. We might be able to jump
8 to Item No. 7 at the top of Page 2.

9 I was just handed a note, your Honor. One other part
10 of the overview I guess I should give you is that in terms of
11 the -- to the extent we're going forward with litigation, for
12 instance, against St. Thomas or a national defendant, there
13 has been filed master complaint and there are short forms
14 people have signed on to. There'll be a process there to
15 identify --

16 THE COURT: What is the short -- what is the purpose
17 of the short form complaint? Is it --

18 MR. SOBOL: For somebody to -- if they want to have
19 their case considered for Bellwether treatment as a test case,
20 they sign on to the master complaint by adding their client's
21 name and providing some other case-specific information
22 without them having to file a whole big fancy complaint.
23 That's the purpose of it.

24 THE COURT: But this is for individual plaintiffs?

25 MR. SOBOL: Correct. Correct.

1 So, unless there's a party that would object, I'd
2 suggest that we can move to A(7), which is at the top of Page
3 2, and I don't know if we could -- and I don't know if Mr.
4 Gottfried wants to add something else in terms of the status
5 of the bankruptcy proceeding.

6 THE COURT: He does.

7 MR. GOTTFRIED: Thank you, your Honor.

8 Just to brief --

9 THE COURT: Why don't you do it sitting down, Mr.
10 Gottfried, and then you can speak into the microphone more
11 easily, and all of these people who come and go can hear you.

12 MR. GOTTFRIED: Sure. Okay.

13 THE COURT: Provided they're still there.

14 MR. GOTTFRIED: Okay. So, here's a brief status
15 report on the bankruptcy.

16 The trustee, Paul Moore's, primary focus has been to
17 negotiate settlements with the insiders, the affiliates and
18 their insurance companies and, as Mr. Sobol has reported, we
19 are making excellent progress. We're very close to having, we
20 think, signed agreements.

21 I can report to you that the final settlement
22 agreements for the two NECC insurers are out for signature.
23 The insiders' insurers, that agreement is final as well,
24 subject to buttoning up the last issue, really, with the
25 insiders.

1 So, the primary mission of the trustee during this
2 first sort of year to get these settlements done is really on
3 the verge of being signed.

4 The next step would be to file in the bankruptcy
5 court for approval of those settlements. It's our thinking
6 that from the day we file those motions, it will probably take
7 30 days for Judge Boroff to hear those.

8 Part and parcel of what's been happening with that is
9 the trustee filed a motion seeking a bar date be put in place
10 by Judge Boroff. Judge Boroff entered extensive orders on how
11 we would gather names on people we would give notice to, where
12 we would publish. More than -- or approximately 20,000
13 notices were sent out, your Honor. They were published from
14 publishing in 62 newspapers. As a result some 3,600 proof of
15 claims have been received by the bar date by the trustee.

16 There was an oversight by the company that was doing
17 the noticing and three clinics' patients were not notified in
18 that original notice, and the motion was filed before Judge
19 Boroff and he has established a supplemental bar date for
20 those group -- those group of patients, which is on May 5th,
21 and I'm pleased to report a number of those folks had notice,
22 anyway, and many of them have already filed proof of claims,
23 but there certainly is a group that we're glad to have given
24 those supplemental notices to.

25 The trustee has also spent a good deal of time

1 dealing with recalls and collecting receivables on behalf of
2 the estate and he has collected \$800,000 in receivables on
3 behalf of the estate through those efforts.

4 So, what I would say is I think the bankruptcy is
5 proceeding well. I certainly agree with what Mr. Sobol said,
6 that the end game here is to create a bankruptcy plan which
7 will result in a trust and, you know, we think that there's a
8 great deal of benefit to defendants to participating in that
9 process and ultimately, you know, getting protection against
10 other claims by joining in the settlement.

11 THE COURT: Thank you.

12 The agenda includes some additional information about
13 -- well, the insurance declaratory judgment action, as I
14 understand. And there were some appeals, I gather?

15 MR. GOTTFRIED: I can talk about the appeals, your
16 Honor, if you would like.

17 You know that the renewed -- the trustee's renewed
18 motion to transfer is before you. The appeal relates to Judge
19 Saylor's original order. You know, in that order he found the
20 Court had related-to jurisdiction. He rejected the argument
21 that he had to mandatorily abstain to transfer and he
22 concluded that he was going to exercise his discretion to
23 abstain from a small category of cases which were state cases
24 where there was no affiliated defendant.

25 He indicated that if and when indemnification claims

1 were actually filed, that he would, perhaps, reconsider that
2 and view it as a dynamic exercise, whereby he would look at
3 new facts and circumstances as they came down the pipe.

4 Even though the so-called Roanoke defendants actually
5 prevailed under Judge Saylor's order, they weren't
6 transferred. They filed an appeal with the First Circuit
7 because they believed he was wrong, certainly not by
8 abstaining, but by not mandatorily abstaining.

9 So, recently the First Circuit established a new date
10 for their brief, which I have in my notes as April 21st, 2014,
11 is when the first --

12 THE COURT: Still this year.

13 MR. GOTTFRIED: Still this year. So, that's when
14 their brief is due and that's what that relates to.

15 THE COURT: Okay. Now, Mr. Sobol, what next?

16 MR. SOBOL: Well, I think it's sufficient to say Mr.
17 Ellis is going to address the declaratory judgment action.

18 There are two excess insurers for Ameridose. Each of
19 them have filed declaratory judgment actions. They are
20 pending before Judge Saylor still. The PSC, through Mr.
21 Ellis' efforts, is moving to -- and others, is moving to
22 intervene, and that's what you need to understand now.

23 THE COURT: Well, there's nothing for us to do with
24 respect to that?

25 MR. SOBOL: There's nothing to do with that.

1 I'd also suggest on these other items -- I would like
2 to have Ms. Parker just give you a very brief update regarding
3 the status of the mediation efforts, too.

4 MS. ANDREWS: And No. 8, Mr. Sobol?

5 MR. SOBOL: Yes, we'll get to that, too.

6 MS. ANDREWS: Well get to that?

7 MR. SOBOL: Yes.

8 UNIDENTIFIED SPEAKER: Would you please put your
9 phone on mute.

10 MS. PARKER: Good afternoon, your Honor.

11 THE COURT: Good afternoon.

12 MS. PARKER: The Court entered -- well, Judge Saylor
13 entered a mediation order that established a formal court-
14 supervised mediation program. It was done in conjunction with
15 both the bankruptcy proceeding and the MDL proceedings.

16 There are currently as of today three of the national
17 defendants who are participating in that mediation process.
18 Those are ARL, Victory and Liberty. There are two clinics,
19 both of whom happen to be from Florida, participating in that
20 process, and then outside of that process there is one clinic,
21 Inspira from New Jersey, that is participating in a private
22 mediation process. There's also one entity participating in
23 the formal court mediation process that I'm not at liberty to
24 disclose publicly who is participating, but there is an order
25 under seal that identifies that entity to the Court, and we're

1 happy to provide additional information if the Court would
2 request.

3 None of those mediations have to date resulted in
4 full resolution or payments of any money and satisfaction of
5 claims. There are, however, mediation dates set with the
6 Court-appointed mediator, which is Resolution LLC. I believe
7 Ms. Carmin Reiss is actually in the gallery today from
8 Resolutions LLC.

9 And there are dates set for various mediations in the
10 month of April. So, we hope to know within the next 60 to 90
11 days whether those mediations will be successful or not.
12 Thank you.

13 THE COURT: Thank you.

14 MR. SOBOL: Can we jump back to No. 8, your Honor?
15 Because I believe that Ms. Andrews and Mr. Coren might want to
16 address something that --

17 THE COURT: Okay.

18 MS. ANDREWS: Thank you, your Honor. I'm going to
19 jump to this mic. Excuse me.

20 So, your Honor, a piece of this litigation that is
21 very interesting to all in the room is that you not only have
22 the PSC led by Mr. Sobol, a very fine committee, you also have
23 a committee of nine creditors that were appointed by the
24 United States Trustee's Office, and I see Mr. Fitzgerald here
25 today.

1 And their duties -- this committee's duties are very
2 different. Before you, you have some 400 filed cases
3 transferred to you or directly filed here before you as
4 plaintiffs.

5 Our role as a creditor's committee is to represent
6 each and every victim and each and every creditor of this
7 company. There are some 3500 claims filed in the -- by virtue
8 of the order. So, this committee represents all of their
9 interests. Its job is to manage those interests, to work
10 together with the trustee in providing and building this fund,
11 to provide essential mediation tools.

12 Because the remedy for this case, and the way I think
13 we all are working, is to drive it through the confirmation of
14 a plan of Chapter 11, because there is a remedy there for all
15 these victims, and the timeline in this case is so essential,
16 that Judge Saylor was really aggressive with and we hope your
17 Honor can appreciate, is to get these funds into the hands of
18 the victims and creditors in this case. So, that's the role
19 of our duly -- a constitutional body appointed by the
20 government and that's the challenge that we face each week in
21 trying to move this case as quickly and as economically as
22 possible toward that.

23 And I'll be happy to answer any questions. And Mr.
24 Coren may have a few comments he would like to make.

25 THE COURT: Anything else, Mr. Coren?

1 MR. COREN: No, your Honor. I think Ms. Andrews
2 outlined the statutory committee's, you know, role. There
3 are, obviously, going to be overlaps between what we do and
4 the PSC does.

5 We in that regard entered an operating agreement of
6 June 6th that hopes to -- to reduce the friction that exists
7 when you have a bicameral set of committees that have to share
8 responsibilities.

9 I think we, for the most part, have done an admirable
10 job. I applaud PSC. I think we pat ourselves on the back for
11 how we've worked together not to have the clashes, but there
12 is an overlap. We recognize that overlap and we hope you
13 understand that.

14 THE COURT: Thank you.

15 Mr. Sobol, what's next?

16 MR. SOBOL: I think we're ready for B(1), your Honor.

17 THE COURT: Let me ask you. There is a pile of
18 motions here. I had not anticipated that we would have any
19 sort of extensive argument on motions. Which one of them
20 actually requires hearing?

21 MR. SOBOL: So, I think that the one that requires
22 hearing, that you should hear, your Honor, is the motion to --
23 the renewed motion to transfer, because there's also counsel
24 from out of state who have been here once before and we
25 couldn't go forward with Judge Saylor. Mr. Sexton is back

1 here again. So, I would suggest if that you're going to hear
2 any argument, that it be on No. 5 on Page 3.

3 THE COURT: Is that the issue that is in the Court of
4 Appeals?

5 MR. SOBOL: I don't think -- it's a related issue,
6 but this is a renewed motion on the basis of some different
7 facts and, therefore, it requires a different, new treatment.
8 So, you won't be able to -- you won't be able to escape the
9 ruling given the appeal.

10 THE COURT: Whatever was done before is not relevant
11 to this motion?

12 MR. SOBOL: It may be relevant, but it's not
13 dispositive and, therefore, this motion needs to be treated
14 because there are different facts with respect to this motion
15 now that require the Court's attention.

16 THE COURT: Okay.

17 MR. SOBOL: So, as to --

18 THE COURT: Is there any reason why I can't deal with
19 the others on the papers?

20 MR. SOBOL: No, there's not from my point of view.

21 I want to make clear one thing. In terms of the
22 motion that's at B(1), the PSC's motion to partially lift the
23 stay, the PSC is content to put that over to the next status
24 conference so you don't have to rule on that one.

25 There will be likely if we settle this case, settle

1 the -- sign the papers that we talked about earlier, that
2 motion will be redrafted to address the different
3 circumstances, and you'll be asked to pass on that, but we'll
4 be essentially asking you to stay matters that relate to
5 dispositive motions against the insiders and making sure that
6 there aren't more motions to attach their assets because
7 they've done a deal. So, we're going to ask you stay -- to
8 modify that request, but there will be a request that some
9 discovery go forward because there are other defendants we
10 also need information about. But the long and the short of it
11 is, number one, we're content to put that over.

12 THE COURT: How about your motion to shorten time,
13 does that go to Judge Boal?

14 MR. STRANCH: Your Honor --

15 MR. SOBOL: Do we intend to put that over? Can we do
16 that on the papers or no?

17 MR. STRANCH: I think there's actually been an
18 agreement. There was a response filed by --

19 THE COURT: So, it's done, correct?

20 MR. STRANCH: -- the clinics.

21 They said we're not entitled to it, but they're going
22 to give us what we want. So, we're happy with their --

23 THE COURT: So, done.

24 MR. STRANCH: Thank you, your Honor.

25 MR. SOBOL: On No. 3 --

1 THE COURT: The motion for entry of CMO establishing
2 assessment procedures. That I think Judge Saylor also had
3 wrestled with at one point, sort of.

4 MR. SOBOL: Yes. And with respect to that, the PSC
5 would be content to have you rule on the papers.

6 THE COURT: Is that one that requires a decision
7 forthwith?

8 MR. SOBOL: No. So, if you wanted to bump that off
9 also until the next time we're all here, that's probably
10 satisfactory.

11 MR. GOTTFRIED: Your Honor, just on that one, if I
12 may. I think you should bump that off until the next one.
13 The PSC actually filed something last night at 5 o'clock,
14 which -- at least we would like to address in oral argument.
15 So, if we don't have time for that today, I would do it later.
16 I don't think it's --

17 THE COURT: So, there's no hurry on it.

18 MR. GOTTFRIED: I don't think --

19 MR. MOLTON: This is David Molton for the creditor's
20 committee.

21 I'm going to join in Mr. Gottfried's request. The
22 committee and the trustee filed joint pleadings on that, your
23 Honor, and, again, in light of the late filing last night --

24 THE COURT: I've already done it.

25 MR. MOLTON: Okay. Thank you.

1 THE COURT: Ms. Anderson, I've already done it.

2 MS. ANDREWS: I'm sorry, your Honor?

3 MR. SOBOL: Pushed it off.

4 THE COURT: We're passing it.

5 MS. ANDREWS: Thank you, your Honor.

6 The only question I had was whether or not you wished
7 to hear oral argument on it. There are a number of joinders
8 to -- that they had various positions on that motion. If you
9 were going to hear it on the papers, that was simply my
10 question.

11 THE COURT: Speaking of papers, the filings are
12 extensive. They're very long. And I think we have a rule
13 about 20 pages. And it doesn't do for you to say that with
14 the assent of all the parties, we're going to file 70. I want
15 to assent. So, please don't just assent to yourselves and
16 amongst yourselves, but ask me whether I'm prepared to read 70
17 pages. If you don't, I will simply ask you to kindly tell me
18 which 20 pages you want me to read.

19 MR. SOBOL: That's the second time this week you gave
20 me that lecture, your Honor.

21 THE COURT: Well?

22 (Laughter.)

23 THE COURT: In any event, Ms. Andrews, we have agreed
24 that that one we will let sit until the next time.

25 MS. ANDREWS: Thank you, your Honor.

1 My only question was whether or not you wished to
2 hear oral argument on it or if you intended to rule on the
3 papers.

4 THE COURT: I have not decided, but I will let you
5 know in due course.

6 MS. ANDREWS: Thank you, your Honor.

7 THE COURT: Then there's the motion for the
8 Bellwether trial and pretrial scheduling orders. Is that the
9 short form or is that -- are you interested in that?

10 MR. BRACERAS: Yes, your Honor. I think Mr. Gross
11 set up this microphone for the defendants. Is that working,
12 Lisa?

13 COURTROOM DEPUTY CLERK URSO: Yes.

14 MR. SOBOL: No objection, your Honor.

15 MR. BRACERAS: I wasn't seeking his objection or his
16 approval.

17 So, your Honor --

18 THE COURT: No. He's not objecting to your butting in.

19 MR. BRACERAS: We're about as new to this case as --

20 THE COURT: I think you're as new as I am. No,
21 you're older than I am. In the case.

22 MR. BRACERAS: Barely. Barely.

23 (Laughter.)

24 THE COURT: Be sure that you speak into it so that
25 the telephone people can hear you.

1 MR. BRACERAS: Yes. Roberto Braceras from Goodwin
2 Procter and Mr. Rehnquist.

3 So, unfortunately, I think Mr. Rehnquist and I helped
4 bring this entire mess to your Honor. We apologize for that.

5 THE COURT: Get on your knees.

6 (Laughter.)

7 MR. BRACERAS: I was expecting that.

8 So, this has actually been helpful to us because
9 we're sort of learning on the fly with the Court since this is
10 our first hearing.

11 THE COURT: I'm happy to share these synopses with
12 you.

13 MR. BRACERAS: They're very useful. They're very
14 useful, but we are afraid they don't tell the entire picture,
15 and especially on this motion for entry of the Bellwether
16 trial. That is something that we think should be set for the
17 next hearing and that we will want to be heard on that.

18 We do think that, and especially this agenda, really
19 gets into the weeds of a lot of the specifics, but as we're
20 just getting into the case, we really think we always have to
21 step back and see the entire organization.

22 I know Judge Saylor, for instance, did not intend
23 these mediations to go into perpetuity. It's also very
24 possible for the other parties to participate in the
25 litigation even if they're going to continue in mediation or

1 other settlement negotiations. I think Mr. Sobol even noted,
2 who knows maybe, Unifirst --

3 THE COURT: What do you want me to do?

4 MR. BRACERAS: I think that at some point all the
5 parties -- we have to know who all the parties are and before
6 we dive into some of the motions, for instance, to discuss
7 pretrial scheduling, you know, orders, we need to know who are
8 the parties going to be. And so, I think this is something we
9 can argue -- well, but a lot of other national defendants
10 aren't here. So, they haven't settled. So, I think that this
11 is something that we would like to be heard on and we can do
12 that --

13 THE COURT: This motion, which is No. 4 on Mr.
14 Sobol's list?

15 MR. BRACERAS: Yes.

16 THE COURT: That's what you want to be heard on?

17 MR. BRACERAS: Exactly.

18 THE COURT: Okay.

19 MR. SOBOL: Turning, then, to No. 5, your Honor.
20 That is the motion that I think --

21 THE COURT: That's the one you want to argue?

22 MR. SOBOL: I think -- in fairness to everybody, I
23 think that's the motion you want to hear, and other people
24 have more than an interest in the PSC. I just want to say
25 this at the outset so you can understand procedurally what is

1 in front of you before the parties start arguing.

2 At the outset of this MDL, there were many cases in
3 the state courts and here in the federal court and also some
4 have been filed in other federal courts that were being
5 transferred pursuant to the MDL.

6 The original motion to transfer that was filed by the
7 trustee sought to move not only all cases that were in federal
8 courts here, but also all cases that were in state courts
9 here, too.

10 Functionally, what Judge Saylor ruled was that all
11 cases in the United States are to be sent here with one carve-
12 out exception. If there were cases that have been filed in
13 state court where NECC, the affiliated defendants, and the
14 individuals were not parties -- so you only have non-
15 affiliated -- you know, no NECC, no insiders, parties to the
16 case, no affiliated defendant parties to the case, and that
17 the defendant clinic, if you will, then, had not filed a proof
18 of claim for contribution or indemnification in the bankruptcy
19 process itself. That was the carve-out.

20 THE COURT: The indemnification claims are also
21 subject to the bar date?

22 MR. SOBOL: Yes, they are. And they're also subject
23 to the bar date that came and went in January for the vast
24 majority of the claims. That was the carve-out.

25 And I think -- I'll be corrected, but I think that

1 carve-out de facto left were a group of cases that were
2 pending in Virginia, by in large, which is why you see most of
3 the opposition now to the renewed motion coming from the
4 Roanoke plaintiffs. Okay?

5 THE COURT: Okay. So, that one when you finish with
6 the rest of it is what I need to hear today, correct?

7 MR. SOBOL: Yes, your Honor.

8 THE COURT: With respect to briefing in progress,
9 that really -- that is simply informational, right?

10 MS. PARKER: Yes.

11 MR. SOBOL: Yes, your Honor.

12 THE COURT: And that is the referred to Judge Boal,
13 similarly.

14 I have, by the way, talked with her and invited her
15 to participate in these proceedings to the point of being on
16 the bench with me, but she is today in Washington and couldn't
17 be here.

18 So, does that mean -- does anybody else wish to be
19 heard on these issues that Mr. Sobol and Mr. Braceras have
20 been talking about, as well as the bankruptcy contingent
21 before we go to the hearing on the motion to transfer?

22 MR. SOBOL: If I may, your Honor. There are -- I'm
23 sorry. There are, I think, two other housekeeping matters
24 that people have handed me notes about.

25 There is a deadline -- the PSC had a deadline to file

1 an amended complaint against the affiliated defendants and the
2 insiders.

3 THE COURT: How much time do you need to do it?

4 MR. SOBOL: Another month, because if we have the
5 case settled --

6 THE COURT: No objection, right? So, that's allowed.
7 What's next?

8 MR. CHALOS: Your Honor, may I be heard briefly on
9 these other issues?

10 THE COURT: You mean on the one that I just ruled on?

11 MR. CHALOS: Different issue.

12 The St. Thomas defendants have filed a set of motions
13 to dismiss. They've each filed two different motions to
14 dismiss. One set of those motions is mostly focused on case-
15 specific issues, and we have an agreement. The deadline for
16 the plaintiffs to respond to those motions is currently March
17 28th. We have an agreement and it was, I believe, Judge
18 Saylor's contemplation that the case-specific motions wouldn't
19 be heard at this point. It would only be global motions heard
20 at this point. So, the Court wouldn't have to get into the
21 factual details of 100 and --

22 THE COURT: So, the general motion that still has the
23 March 28th deadline?

24 MR. CHALOS: They all currently have the March 28th
25 deadline, but we have --

1 THE COURT: Yes, but you don't want to extend that or
2 you do?

3 MR. CHALOS: We do not. We don't want to extend the
4 global motion deadline or the --

5 THE COURT: So, the global motions, you respond by
6 the 28th.

7 MR. CHALOS: Right.

8 THE COURT: And the other one sits there.

9 MR. CHALOS: The other one, we ultimately will ask
10 the Court to extend that indefinitely, at least for the time
11 being. But, in the meantime, we have an agreement to extend
12 that deadline by about two weeks to April the 14th.

13 In the interim, we're going to work to figure out if
14 we can agree which issues are truly case specific and which
15 issues are global, and we will brief the global issues, to the
16 extent there are any in those motions, by the 14th of April,
17 if not sooner. And we will also present to the Court a
18 proposal for putting off the deadline to respond to truly
19 case-specific issues indefinitely. And the motions I'm
20 talking about are Motions 770 and 779.

21 So, what we're asking your Honor to do is, in the
22 interim, to extent the deadline to respond to Motions 770 and
23 779 to April the 14th, and then we'll come back to your Honor
24 at some point before then and say we want to extend that
25 deadline indefinitely for the following issues and we're going

1 to respond on these other issues.

2 THE COURT: I don't see those motions in my list.
3 Where are they on Mr. Sobol's list?

4 MS. PARKER: On Page 4, your Honor, No. 3(A) -- I
5 apologize, your Honor. 3(C).

6 THE COURT: I see. Under (C). 770 was under (C).
7 And what was the other one?

8 MR. CHALOS: 779.

9 THE COURT: I saw that up above.

10 Okay. So, in any event, 770 and 779 have -- the time
11 for responding is now April 14th.

12 MR. CHALOS: Yes, ma'am.

13 THE COURT: And the other one, is it -- yes. 779 is
14 part three of the (C).

15 MR. CHALOS: The motion --

16 THE COURT: Which is the one that is ripe?

17 MR. CHALOS: 771 and 893, both of those are going --
18 the deadline is going to remain March the 28th.

19 THE COURT: Okay. 771 is C(2). And 899, did you
20 say?

21 MR. CHALOS: 893.

22 THE COURT: 893.

23 MR. CHALOS: We'll file a proposed order, your Honor,
24 if that would be helpful.

25 THE COURT: Okay. That's good. Thank you.

1 MR. CHALOS: Okay. Thank you, your Honor.

2 THE COURT: Now, who wants to be heard on the motion
3 that you all agree I should hear? Namely, the No. 722. Mr.
4 Gottfried, you want to be heard?

5 MR. GOTTFRIED: Yes. Should I sit for this again?

6 THE COURT: Well, I think it's probably better if you
7 sit down.

8 Let me just suggest that we hear the persons who are
9 far away first and then you can incorporate anything you want
10 to say with respect to that. I would ask nobody to go for
11 more than three minutes because I can see there are a number
12 of you.

13 MR. MOLTON: Your Honor, David Molton for the
14 committee. Mr. Gottfried and myself have broken off the
15 movants' argument into two portions, meaning jurisdiction and
16 the abstention issue. Mr. Gottfried will be handling the
17 jurisdiction issue. I'll be handling the abstention issue.

18 THE COURT: Okay. Who of those people who are
19 participating by telephone want to be heard on this motion?

20 MS. ELLERMAN: Lauren Ellerman in Roanoke, Virginia,
21 your Honor.

22 MR. LICHTENSTEIN: And John Lichtenstein, Roanoke,
23 Virginia as well, your Honor.

24 THE COURT: Are you both on the same side of this
25 issue?

1 MS. ELLERMAN: Same side of the issue yes, your
2 Honor, but represent very different plaintiffs.

3 THE COURT: I'm sorry. It was Ms. Ellerman. And who
4 is the second one?

5 MR. LICHTENSTEIN: The other is John Lichtenstein.

6 THE COURT: Okay, got it.

7 MR. LICHTENSTEIN: And, your Honor, I would suggest,
8 at least with respect to these issues -- I believe Mr. Sexton
9 is there in the courtroom --

10 THE COURT: He's already stood up. So --

11 MR. LICHTENSTEIN: -- follow his argument.

12 THE COURT: So, Mr. Sexton.

13 MR. LICHTENSTEIN: And we'll be brief.

14 THE COURT: And somebody else in the back.

15 MR. HOGAN: Good afternoon. Al Hogan from Skadden,
16 Arps.

17 THE COURT: Whom do you represent?

18 MR. HOGAN: Insight Health Corporation, the clinic.
19 We filed a joinder to the trustee's motion.

20 THE COURT: You need to speak up because neither the
21 reporter nor I can hear you. Just shout.

22 MR. HOGAN: I represent Insight Health Corporation.
23 We filed a joinder to the trustee's motion. I would like to
24 be heard after the trustee presents the motion. I would like
25 an opportunity to address the Court.

1 THE COURT: Okay. Ms. Ellerman and Mr. Lichtenstein,
2 why don't you start, but, please, do not collectively take
3 more than four minutes because there are many people speaking
4 and I have some other cases waiting.

5 MS. ELLERMAN: Thank you, Judge. This is Lauren
6 Ellerman.

7 I have the privilege of representing three plaintiffs
8 who have filed state court claims that have been ongoing for
9 almost 13, 14 months here in Roanoke City. I represent Chance
10 Baker, Ferman Wertz and Patrick Johnson.

11 Your Honor, we filed a response to the trustee's
12 motion to transfer, appealing to the Court on not only the
13 related two jurisdiction issue asking the Court to abstain
14 from exercising such jurisdiction, but, most importantly, your
15 Honor, pointing out to some of the judicial equity issues that
16 justice really does require for our three plaintiffs and
17 clients the ability to remain here locally and to continue to
18 prosecute their claims.

19 Reason number one, your Honor, is that dealing with
20 discovery disputes in Boston is, quite frankly, economically
21 prohibitive for these three individuals.

22 In addition, your Honor, one of our state court
23 claims -- actually, all three of our state court claims have
24 trial dates in the next year in Roanoke City.

25 Now, just this week there was an attempt by an

1 affiliated defendant to remand one of our cases to federal
2 court in the Baker matter, but, your Honor, as a third party
3 defendant, they do not have the right to remand to federal
4 court and we are quite confident that the Western District of
5 Virginia will, in fact, take that case back to state court,
6 and we hope that we will be keeping our August trial date.

7 Your Honor, we did not name NECC. We did not name
8 any of the affiliated defendants. We have not prosecuted
9 claims against them. Our cases are against the local
10 physician practice and the local clinic here in Roanoke,
11 Virginia, and we believe, your Honor, because we are in no way
12 affecting the NECC debtor's claim or the estate, that we
13 should have the right under the -- that justice requires that
14 we have the ability to continue here.

15 And, your Honor, very briefly -- and I know my
16 colleagues from Roanoke, Mr. Lichtenstein and Mr. Sexton, will
17 be more detailed.

18 But, your Honor, when we are dealing with cases that
19 are substantially litigated already, discovery is almost
20 complete in one, thoroughly on its way the other two, where we
21 have trial cases in state court -- trial dates, we are very
22 aware that we've been pushing these cases. We ask that you
23 choose not to exercise jurisdiction and, essentially, allow
24 the plaintiffs that have worked so hard to push these matters
25 to seek justice quickly not to be hampered by the trustee's

1 motion to bring us up to Boston.

2 Thank you, your Honor, for your time. And I know
3 that my two colleagues here in Roanoke have additional
4 comments.

5 THE COURT: Mr. Lichtenstein.

6 MR. LICHTENSTEIN: Thank you, your Honor.

7 And I would let the Court know as well that we also
8 have cases pending and we have them pending with regard to
9 Insight and the local clinic, and I would advise the Court as
10 well that the local clinic defendant also opposes this motion
11 to transfer.

12 THE COURT: Is that your client? Do you represent
13 the local clinic?

14 MR. LICHTENSTEIN: No. We represent the -- we
15 represent -- collectively we filed on behalf of 46 plaintiffs.

16 THE COURT: Okay.

17 MR. LICHTENSTEIN: We represent 33, and we include in
18 this argument that Brown & Jennings, intervene lawyers, now
19 have pending cases as we have pending cases with respect to
20 these arguments.

21 So, we're on behalf of 46 injured plaintiffs who
22 oppose the trustee's motion to transfer.

23 THE COURT: Okay.

24 MR. LICHTENSTEIN: We have not filed these actions
25 against NECC. We have not filed against affiliated

1 defendants. We have filed against Insight Health Corporation,
2 the owner of the clinic, and the local Image Guided Pain
3 Management aspect, who also, like us, opposes the transfer.
4 One of the two defendants in the case opposes the transfer,
5 and we have two points that we have briefed to your Honor, and
6 we also greatly appreciate the opportunity to be quickly
7 heard.

8 With regard to related-to jurisdiction, we had
9 previously set forth and now have pending cases in the City of
10 Roanoke Circuit Court based on battery and based on fraud, and
11 under Virginia law, there is no way of contribution. There is
12 an express prohibition of contribution for those causes of
13 action.

14 And so, we've taken the position early now on pending
15 cases argued to your Honor, that the mere filing of a proof of
16 claim by Insight Health Corporation is hollow and cannot
17 confer jurisdiction where there is, indeed, no right to
18 contribution.

19 I know that Mr. Sexton will further argue the other
20 matters with regard to abstention, which we have joined, but
21 we, similarly, make the arguments to your Honor where we have
22 46 persons, we do not -- we have not joined these other
23 defendants in these actions, NECC or affiliated.

24 So, we have to -- your Honor, the end result of that,
25 we submit to the Court, is that because there is absolutely by

1 law no right of contribution in Virginia, there is no related-
2 to jurisdiction with respect to Insight Health Corp. It is
3 already the case that the second defendant, Image Guided Pain
4 Management, has asked to stay in Virginia, has asked to stay
5 in the City of Roanoke Circuit Court and has filed that motion
6 to the Court and it's before your Honor today.

7 So, we have asked the Court to find that there is no
8 related-to jurisdiction with respect to these cases. We join
9 the abstention arguments that Mr. Sexton will argue.

10 And, your Honor, with respect to pending cases in the
11 City of Roanoke, without joining NECC or affiliated
12 defendants, we respectfully ask the Court to allow us to stay
13 in the City of Roanoke for these cases.

14 Thank you, your Honor.

15 THE COURT: Thank you. Mr. Sexton.

16 MR. SEXTON: Yes, your Honor. Thank you. It's great
17 to be before you, your Honor.

18 This transfer motion presents some issues. It's very
19 hard to summarize in just a few minutes, but, fortunately, I
20 think the briefing --

21 THE COURT: Consider it a challenge.

22 MR. SEXTON: The briefing -- I do it consider it a
23 challenge.

24 The briefing that you have before you is really -- it
25 puts a good -- it definitely sheds a lot of light on the

1 issues.

2 You have started this a year ago with the trustee's
3 motion to transfer these cases. I agree mostly with what Mr.
4 Sobol said about what Judge Saylor did.

5 I do not believe he carved out in exactly the same
6 manner. I think he decided to permissively abstain because he
7 said he thought even the existence of jurisdiction was so
8 dubious and he thought that, perhaps, if a proof of claim was
9 filed, that would change things. He did not telegraph exactly
10 how he would rule. He just left it open that he would allow
11 that open.

12 However, one of the most significant things that he
13 said in his opinion was that if -- any defendant who did not
14 file a claim would be barred from pursuing contribution and
15 indemnity. And he wrote: "And the state court case could
16 proceed to judgment without interference from the federal
17 court." That's paragraph -- that's Page 19 of his opinion.

18 Now, what my colleague, Mr. Lichtenstein, has pointed
19 out to you is very significant and it is an issue that I would
20 like to bring to your attention because no one has briefed it.

21 There are four defendants in each of the Roanoke
22 cases. All of my colleagues are, essentially, the filing the
23 same case, and one defendant is Insight Health Corp., who you
24 will hear from. One defendant is a practice group called
25 Image Guided Pain Management. Another defendant is a doctor,

1 Dr. Madda (phonetic) and another is a Dr. O'Brien. So, there
2 are four defendants.

3 Three of those defendants read what Judge Saylor
4 wrote in his opinion last year and said they wanted to stay as
5 far away from the Boston MDL and Boston bankruptcy as they
6 could get. So, consequently, they did not file a proof of
7 claim.

8 Now, this places -- apart from all of the challenging
9 legal issues before you, this places a very practical issue.
10 You have one defendant who has for some type of strategic
11 reason decided it's better to be here, and then you have three
12 defendants who have chosen the opposite path, with a
13 representation from this Court through a prior opinion, that I
14 know you didn't write, which said if they choose that path,
15 they would remain unmolested by the federal court system.

16 So, that is something that I do not believe has been
17 briefed and it's one thing I wanted to make sure that I
18 brought to your attention.

19 To go back to the basic --

20 THE COURT: Are you saying that the motion of the
21 bankruptcy -- the trustee's motion to transfer cases includes
22 cases in which there was no proof of claim filed and which
23 were not cases removed to federal court and here by virtue of
24 that?

25 MR. SEXTON: Right. They have not removed to federal

1 court. Now --

2 THE COURT: Why would the bankruptcy court -- or the
3 trustee of bankruptcy seek to transfer a case that is not
4 before the trustee?

5 MR. SEXTON: Well, your Honor, we've been perplexed
6 by that, too, and we feel --

7 THE COURT: But how do you know that these other
8 cases are included in the bankruptcy court's motion?

9 MR. SEXTON: I know that because they fought me at
10 every step of the way in trying to protect these cases and I
11 know what these cases are.

12 THE COURT: Okay.

13 MR. SEXTON: And in these instances, we have filed
14 state court cases only. We have state court defendants. We
15 have state court causes of action. They could not have been
16 brought in federal court.

17 Now, the trustee --

18 THE COURT: They could on the basis of diversity,
19 couldn't they?

20 MR. SEXTON: There is no diversity, because we have
21 state court defendants.

22 THE COURT: Because you didn't sue NECC or any of
23 them?

24 MR. SEXTON: Right, we did not sue NECC or any
25 affiliated defendant of NECC.

1 THE COURT: So, your motion really is directed not at
2 the trustee's motion, in general, but simply with respect to
3 your clients as being special and different from everybody
4 else?

5 MR. SEXTON: Absolutely.

6 THE COURT: Got it.

7 MR. SEXTON: Our clients are state court cases.

8 THE COURT: Okay.

9 MR. SEXTON: And we believe, as a practical matter,
10 that the trustee has stretched the outer bounds of related-to
11 jurisdiction. If you go back to *Pay Corp* and then you just
12 compare what it says about contribution and indemnity -- and
13 I'm not going to go through that litany, but they tend more to
14 *Dow*, the *Dow* argument of the Sixth Circuit. And so, that is a
15 substantial issue, because in *Pay Corp* the court said, you
16 know, a potential contribution or indemnity claim is simply
17 not enough to refer -- confer related-to jurisdiction.

18 THE COURT: Are they prepared to waive any claims of
19 that sort?

20 MR. SEXTON: They have waived the claims.

21 THE COURT: By not filing within the bar date?

22 MR. SEXTON: Yes. Three of the defendants --

23 THE COURT: And they understand that they're out of
24 any claim of -- or indemnity or contribution?

25 MR. SEXTON: Right, which is illusory, anyway. Every

1 single defendant is --

2 THE COURT: Whether it's illusory or not, they agreed
3 that they cannot under any circumstances get indemnity or
4 contribution?

5 MR. SEXTON: They certainly do, and they have even
6 joined in filing -- if you look at Mr. Sobol's agenda, Item
7 5(J) is the opposition filed by Image Guided Pain Management.
8 Their counsel has entered a special appearance in this case
9 just to note their opposition to being uprooted and
10 transferred to Boston. So, the --

11 THE COURT: Well, that is different from waiving
12 rights and claims.

13 MR. SEXTON: Well, I believe the notice and the bar
14 date -- the bar date order makes it very clear that you waive
15 your claims if you don't file by the bar date. So --

16 THE COURT: Okay.

17 MR. SEXTON: -- this raises a second issue.

18 Even if you get past the related-to jurisdiction,
19 then you have to get past mandatory abstention. If you have a
20 state court case that's been filed that's proceeding that
21 could not have been brought in federal court in the first
22 place, then the Court must abstain.

23 THE COURT: Okay.

24 MR. SEXTON: And so, that is where we disputed what
25 happened with Judge Saylor's first opinion and that is what is

1 on appeal. Judge Saylor's first opinion was in direct
2 conflict with the Western District of Virginia.

3 THE COURT: Would it not be prudent of me to hold off
4 on deciding that particular piece of it until the Court of
5 Appeals tells me what's right?

6 MR. SEXTON: Well, that would put me in a bit of a
7 problem, because we've told the Court of Appeals that they
8 should hold off until they hear from you, because if you grant
9 -- if grant our motion to --

10 (Laughter.)

11 MR. SOBOL: He thought it was Judge Saylor, not Judge
12 Zobel.

13 MR. SEXTON: If you grant our motion to abstain, the
14 appeal is moot. And so, we've been in constant contact with
15 the Clerk and, as Mr. Gottfried said, the --

16 THE COURT: You should have consulted me first.

17 MR. SEXTON: Pardon me?

18 THE COURT: You should have consulted me first before
19 you tell the Court of Appeals something like that.

20 MR. SEXTON: Well, they very much value your opinion.
21 They want to know what you have to say.

22 (Laughter.)

23 THE COURT: I'll I remind them of that the next time
24 they reverse me.

25 (Laughter.)

1 MR. SEXTON: Well, I think they're bound to reverse
2 Judge Saylor, but I certainly hope they won't reverse your
3 opinion on that.

4 The gist of it, your Honor, I really would hope you
5 would rule on it and grant the motion. We've renewed our
6 motion for mandatory abstention.

7 THE COURT: I understand your argument.

8 MR. SEXTON: Okay. Then do you understand their
9 argument as to why mandatory abstention doesn't apply?
10 Because they take --

11 THE COURT: I understand that that's the position
12 that various participants are taking.

13 MR. SEXTON: Okay. The --

14 THE COURT: Can we finish this?

15 MR. SEXTON: I'm landing the plane, your Honor.

16 The last thing I would like to point out to you is
17 something you seemed interested in and something that I have
18 tried to draw to the attention of anyone has been sitting in
19 your spot in this proceeding.

20 This is not a transfer motion under an MDL. This is
21 a transfer motion under bankruptcy law, claiming that our
22 claims that we've asserted against state court defendants are
23 the equivalent of claims against the debtor and, therefore,
24 must be heard in federal court, either in the district where
25 they arose, which is Roanoke, or this district. That's

1 157(b)(5) transfer, venue provision.

2 THE COURT: If I were to say that I will not allow
3 the motion to transfer if your clients file absolute and total
4 waivers of any claim against the bankrupt estate or any
5 defendant in these proceedings, would they do it?

6 MR. SEXTON: Are you talking about would the
7 plaintiffs waive their claims?

8 THE COURT: No. The plaintiffs are suing your
9 clients, aren't they?

10 MR. SEXTON: No. I'm a plaintiff.

11 THE COURT: You're a plaintiff, too.

12 MR. SEXTON: Oh, I have failed miserably.

13 THE COURT: Then you're talking about -- but then the
14 plaintiffs will need to file these waivers, too. Whoever
15 doesn't want to get transferred needs to tell me that they're
16 not part of the case, not part of the bankruptcy case, have no
17 claims against anybody in the bankruptcy court.

18 MR. SEXTON: Well, we don't believe that that is the
19 procedure that's required in order to grant a motion to
20 abstain.

21 THE COURT: Well, it may not be the procedure
22 required, but it may be the procedure required here.

23 MR. SEXTON: Okay. Well, then maybe --

24 THE COURT: I'm simply putting out there, you know,
25 you may let me know. You make a point of the fact that your

1 clients are not claiming in the bankruptcy court and,
2 therefore, their cases should not be transferred here as
3 related to the bankruptcy court. So, make it very clear that
4 they are not claiming.

5 MR. SEXTON: Well, your Honor, it seems to me, to be
6 honest, like just another hurdle. And the last time we were
7 here, it was, well, maybe if they don't file a proof of claim.
8 And so, now that benchmark has come and gone and it's, well,
9 in addition, now maybe they'll sign a waiver.

10 THE COURT: It sounds to me as though you're not
11 waiving. You're keeping open the doors.

12 MR. SEXTON: We were never requested to waive until
13 just now. The defendants -- if you read Judge Saylor's
14 opinion, it said any defendant -- if you go back to the
15 trustee's motion, he seeks to join claims against defendants
16 -- and these were his direct words -- "who may have
17 indemnification claims against NECC."

18 So, his motion only covered people who may have
19 claims.

20 Three of those four people have now said, We have no
21 claims, and they did it by the way this Court told them to do
22 it, by not filing a proof of claim.

23 And so, if the Court would like them to do something
24 else, I will point that out to those defendants. I have one
25 defendant in the room who I'm sure is not going to do that and

1 that's Insight Health Corp., which presents another conundrum.

2 But the point of 157 is this. I do believe that it
3 is not like an MDL transfer for purposes of pretrial
4 proceeding. We view that as exactly what it says, a transfer
5 for purposes of trial.

6 And so, we think it would be artificial for the Court
7 to say, Yes, I'm going to use 157(b)(5) to transfer it up to
8 my court for purposes of trial and then later on attempt to
9 use some other procedure to transfer it back to some other
10 venue.

11 That is particularly troublesome in this case because
12 the federal court in Roanoke, Virginia has already had a
13 chance to have all of my cases -- and that's 18 remaining.
14 One now is fully resolved. 18 remaining cases have already
15 been before that judge and he has said that he does not want
16 them and that he had to mandatorily abstain. So, we are --

17 THE COURT: Thank you very much.

18 MR. SEXTON: Thank you, Judge Zobel.

19 THE COURT: Mr. Hogan.

20 MR. HOGAN: Good afternoon.

21 THE COURT: You got three minutes, too.

22 MR. HOGAN: I'll try to go quickly, Judge. I think
23 we need to try and clear up some chafe here.

24 The first thing that you need to understand, each one
25 of the plaintiffs in the Virginia actions that Mr. Sexton was

1 talking to you about and all the folks on the phone were
2 talking to you about, have filed proofs of claim in the
3 bankruptcy. Fact number one.

4 THE COURT: Including Mr. Sexton's client?

5 MR. HOGAN: Absolutely, Judge.

6 Second fact, Judge: The three other defendants that
7 didn't file proofs of claim, I don't care about them. Insight
8 Health Corporation is a defendant in each and every one of
9 those actions. We filed a proof of claim in the bankruptcy.
10 Our proof of claim is going to have a substantial effect on
11 this bankruptcy to the extent that we're held liable anywhere
12 in the world for the harm caused by NECC providing our pain
13 clinics with tainted steroids and then injecting them into our
14 patients.

15 The claims that they seek against us in Virginia,
16 they're asking for more than \$100 million in total. That's
17 our proof of claim. We're not waiving it. We intend to
18 pursue our claims for contribution and indemnity and
19 negligence and fraud against NECC --

20 THE COURT: Are you objecting to the transfer?

21 MR. HOGAN: I support the transfer, Judge, because --
22 I support the transfer because Insight Health Corporation
23 believes that in the interest of justice and judicial economy,
24 the consolidated proceeding is the best way to deal with the
25 circumstance, and we intend to pursue our claim in the

1 bankruptcy court and that's why we support the trustee's
2 motion to transfer.

3 THE COURT: Thank you.

4 MR. HOGAN: That's all I have to say, Judge.

5 THE COURT: Mr. Gottfried, did Mr. Sexton's clients
6 file proof of claim?

7 MR. GOTTFRIED: Yes. So, what I was going to say to
8 the Court, as briefly as I can, before I turn it over to Mr.
9 Molton, is that I think the starting point for you in looking
10 at this motion is Judge Saylor's very well-reasoned,
11 thoughtful opinion, and just to point out to the Court that
12 our renewed motion pivots on Judge Saylor's opinion and is
13 based on what now are true changed circumstances that didn't
14 exist when Judge Saylor first looked at this and which he
15 expressly understood would change, in all likelihood, once the
16 bar date was set and come and went.

17 And what those two circumstances are, what my brother
18 just said, which is that the plaintiffs who are saying they
19 want to be in Virginia, also filed proof of claims in this
20 bankruptcy because they think they also want to participate in
21 the settlements that we've been reporting to you today. So, I
22 think that supports related-to jurisdiction under 1334(b).

23 The second changed circumstance is something, again,
24 that Judge Saylor expressly countenanced in his opinion, which
25 is that when the bar date was set, folks like Insight who you

1 just heard from would have to choose. Are they going to file
2 a proof of claim for indemnity or contribution or not?

3 In this case, Insight said, yes, they did. And
4 that's precisely the change in circumstance that we say Judge
5 Saylor contemplated, and that's the reason why we filed our
6 renewed motion.

7 The only other thing I want to say, because I'm in
8 agreement with my brother, Mr. Sexton, the papers are quite
9 good and I think Judge Saylor's opinion is excellent, is that
10 the cases -- just to avoid any lack of clarity for the Court,
11 the cases that we're talking about at the time we filed our
12 renewed motion are in Exhibit 1 to our motion, which are one
13 through -- I think it's 22 in our chart. And Insight, the
14 clinic that, in fact, filed the proof of claim is a defendant
15 in all of those cases.

16 And I'll turn it over to Mr. Molton.

17 THE COURT: Okay.

18 MR. MOLTON: Your Honor, I'm going to be as quick as
19 Mr. Gottfried, which I hope will make your Honor happy.

20 I'm going to address a few things my friend Mr.
21 Sexton --

22 THE COURT: How about Mr. Hogan? He was the fastest
23 of all.

24 MR. MOLTON: Well, I'm going to refer to him --

25 THE COURT: Now we have a race.

1 MR. MOLTON: The mandatory abstention issue raised by
2 my friend Mr. Sexton has already been decided by Judge -- by
3 Judge Saylor's prior decision and, basically, what he said,
4 *Correcting Cases* at 496 DR 272, is that in the context of a
5 157(b)(5) transfer and 1334 of Title 28, that mandatory
6 abstention is not applicable here.

7 Now, I just want to say a few things about the
8 appeal, because I know there was a status report given, but
9 one of the things that the First Circuit asked us to brief is
10 whether they have appellate jurisdiction over this, and this
11 is why we joined in asking your Honor to decide this case now
12 and not to wait. It's a non-final order that was appealed.
13 There was no 1292(b) certification requested of Judge Saylor,
14 and the circuit in granting the committee's motion for
15 intervention gave the parties a list of questions that they
16 wanted answered in connection with final order issues and
17 jurisdictional issues. So, it may be that that appeal will be
18 dismissed on jurisdictional grounds.

19 Number two, your Honor, I think Mr. Sexton is right,
20 completely right, that this is a bankruptcy transfer. This is
21 a bankruptcy transfer pursuant to a specific section that
22 Congress legislated, that all the courts that have considered
23 this have said, Well, it's a different sort of abstention
24 review that's required, and that goes right to what Congress
25 said and what it means.

1 157(b) (5), it says the District Court shall order the
2 transfer. The courts have dealt with this, have said that's
3 the default. It's not a typical abstention review and that
4 the default -- and the rule is transfer. The exception is
5 abstention. And the grounds for abstention have to be really
6 compelling.

7 And I refer your Honor to Judge Rakoff's case, the
8 *Twin Labs* case in the federal litigation and the *Pan Am* case
9 that we cited from the Second Circuit in our brief.

10 And I want to take you, your Honor, to one thing that
11 hasn't been talked about, but I think should be brought up to
12 the Judge, because we've heard a lot about equity from the
13 plaintiffs on the phone and from Mr. Sexton and about, you
14 know, that they're in Virginia and they want to pursue these
15 cases.

16 Judge Saylor, at Page 263 of 496, bankruptcy
17 reported, basically said why does Congress want
18 centralization? And why did Congress want centralization of
19 cases? Not just the plaintiff cases, but the indemnification
20 cases.

21 He said pursuant to the bankruptcy court, such
22 indemnification claims -- and I'm paraphrasing a little --
23 would normally have to be considered on an equal footing with
24 the claims of injured plaintiffs against the estate, as claims
25 of unsecured creditors, because all unsecured creditors are

1 normally paid *pari passu*, that is proportionally without
2 preference, based on the amounts of their claims.

3 And then I'm going to underscore, "Even one large
4 contribution or indemnity claim against the estate could
5 greatly diminish or virtually eliminate the amount available
6 to be paid to the remaining claimants."

7 Now, your Honor, I was looking through my email this
8 morning and I saw -- when this transfer motion was first made,
9 there were 22 Virginia cases to be transferred. Now there's
10 only 21, because Mr. Sexton's case, a case that was scheduled
11 for trial in April, settled. And today it was announced all
12 over the Internet that that settlement amount was \$4.5
13 million.

14 Now, what that means in terms of the bankruptcy and
15 in terms of all the other plaintiffs --

16 THE COURT: 4.5 indemnification?

17 MR. MOLTON: That's it, Judge.

18 And where does that money come from? It comes from
19 the pockets of other plaintiffs. And not only that, but to
20 the extent that insurance money has been used to pay that \$4.5
21 million, that's lesser insurance that's available for the good
22 of the whole.

23 So, when we talk about equity and when we talk about
24 justice in the context of bankruptcy, let's go back to what
25 Congress realized and mandated and wrote. Let's bring

1 everybody together where your Honor can case manage these
2 cases in an effective way to prevent people getting a one up
3 on other injured victims who have suffered horribly as a
4 result of this outbreak, and creating claims in the bankruptcy
5 that now Mr. Gottfried and the committee will have to litigate
6 against these indemnifications, further using up resources of
7 the estate, all to the detriment of everybody else's client in
8 this room and on the phone. Thank you.

9 THE COURT: Thank you, very much.

10 MR. SOBOL: If I may, your Honor. I just want to
11 make sure that we don't throw the baby out with the bath water
12 on the plaintiffs' side.

13 The plaintiffs' -- PSC's point of view, although
14 there's a verdict that's out there, it doesn't mean anything
15 about the validity of Insight's contribution and
16 indemnification claim. We would still fight that in the
17 bankruptcy case. We still think it's worth zero, not worth
18 \$4.5 million.

19 THE COURT: But there's always a risk.

20 MR. SOBOL: Well, there's a risk, to be sure, but the
21 only risk that's out there is whether or not it's a valid
22 indemnification and contribution claim, not the fact that
23 there's been a settlement for that amount. We don't want to
24 lose sight of that issue.

25 THE COURT: Are there any other issues that we need

1 to discuss, not the transfer?

2 MR. MOLTON: One point, Judge. Can I just follow up?
3 I forgot to say one thing.

4 Judge Saylor, way back when he considered the first
5 transfer motion, had real questions about how indemnification
6 and contribution cases worked in a bankruptcy and whether --
7 I'm not going to give a bankruptcy lecture right now. I know
8 your Honor would cut me at the legs off for doing that, but
9 I'm going to refer you, your Honor --

10 THE COURT: Maybe at the legs.

11 (Laughter.)

12 MR. MOLTON: -- to a pleading that the committee
13 filed in conjunction with the trustee that really gave a real
14 synopsis of this.

15 This was a May 20th, 2013 post-hearing memorandum of
16 official committee in support of the trustee's motion. And
17 it's on the docket. It's a docket entry and it goes through--

18 (Interruption by automated telephone conference announcement.)

19 MR. MOLTON: It goes through the issues and it
20 addresses some of the issues raised by Mr. Sobol, but outlines
21 the significant risks.

22 THE COURT: Thank you.

23 Are there any other matters that we need to deal with
24 besides this motion to transfer?

25 MR. SOBOL: Yes. I don't know whether you want to do

1 this now, your Honor, but there probably should be a schedule.
2 There should be other dates for status conferences.

3 THE COURT: Yes.

4 MR. SOBOL: We're also --

5 THE COURT: I have the schedule that Judge Saylor has
6 set up. I, frankly, am not enamored with a 1:30 meeting. So,
7 I propose that we change the status conference that he
8 scheduled on April 11th to April 10th, at 2:00.

9 Lisa, I know there is something else, but I think we
10 can manage that.

11 COURTROOM DEPUTY CLERK URSO: We have two.

12 THE COURT: Just move it.

13 So, April 10th, at 2:00, is the next meeting of this
14 group. Okay?

15 MR. SOBOL: Thank you, your Honor. We'll work on the
16 technology so that --

17 THE COURT: I'm sorry?

18 MR. SOBOL: We'll work on the telephone things.

19 THE COURT: Yes. Well, I think it may be that we
20 have to do something to keep them from talking to us.

21 COURTROOM DEPUTY CLERK URSO: We do.

22 THE COURT: So, we'll do that next time.

23 COURTROOM DEPUTY CLERK URSO: IT just typed and told
24 me what I have to do before the next hearing.

25 THE COURT: Okay. So, before the next hearing, we'll

1 do what we have to do to quiet the people out there. It's not
2 them as much as the operator.

3 Thank you. We're in recess on this case.

4 And I do wish to thank you for your very good
5 briefings and I hope that this will be as seamless a
6 transition as we can make it.

7 (Attorneys collectively say, "Thank you, your Honor.")

8 (Adjourned, 2:59 p.m.)
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13 C E R T I F I C A T E

14 I, Catherine A. Handel, Official Court Reporter of
15 the United States District Court, do hereby certify that the
16 foregoing transcript, from Page 1 to Page 71, constitutes to the
17 best of my skill and ability a true and accurate transcription
18 of my stenotype notes taken in the matter of Civil Action No.
19 MDL-13-2419-RWZ, In Re: New England Compounding Pharmacy Cases
20 Litigation.
21
22

23 March 17, 2014
24 Date

/s/Catherine A. Handel
Catherine A. Handel, RPR-CM, CRR
25